

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA

CHARLES G. WARNER,
Debtor.

Case No. 97-55564
Chapter 7

DANIEL C. WHITE,
Plaintiff,
v.

Adversary No. 97-5480

**MEMORANDUM DECISION
AND ORDER THEREON**

CHARLES G. WARNER,
Defendant.

Daniel C. White filed the instant complaint to determine the dischargeability of various state court claims for malicious prosecution currently pending against Charles G. Warner. The malicious prosecution claims arose from dental malpractice lawsuits filed by Warner against White on behalf of twelve of White's former patients. White now seeks to have this proceeding transferred to district court pursuant to 28 U.S.C. § 157(b)(5) or, in the alternative, to have his dischargeability claim decided by a jury.

According to 28 U.S.C. § 157(b)(5), "[t]he district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending." Therefore, the first issue is whether the claims asserted against Warner are "personal injury tort" claims within the meaning of § 157(b)(5). The cases addressing this issue are split

1 in their definitions of the term “personal injury tort” in the context of § 157(b)(5).

2 One line of cases advocates construing “§ 157(b)(5) to encompass federal and state causes of
3 action for all personal injury tort claims.” In re Boyer, 93 B.R. 313, 318 (Bankr. N.D.N.Y. 1988)
4 (citations omitted). See In re Smith, 95 B.R. 286 (Bankr. N.D.N.Y. 1988). Meanwhile, a second line
5 of cases asserts that “Congress intended this [personal injury tort claims] exception for a ‘narrow range’
6 of claims.” In re Cohen, 107 B.R. 453, 455 (S.D.N.Y. 1989) (citation omitted). See In re Vinci, 108
7 B.R. 439, 442 (Bankr. S.D.N.Y. 1989).

8 The question under both of these approaches, however, “is whether the emotional trauma is the
9 gravamen of the complaint or merely an element of damages.” In re Thomas, 211 B.R. 838, 841 (Bankr.
10 D.S.C. 1997) (finding that where state court complaints sought recovery for intentional infliction of
11 emotional distress, a personal injury tort claim had been pled). In either approach, the courts agree that
12 claims of emotional distress that are not the focus of a complaint will not be transferred to the district
13 court. Bertholet v. Harman, 126 B.R. 413, 415 (Bankr. D.N.H. 1991) (negligence and intentional
14 misconduct by a trustee resulted in claims in the nature of humiliation, which did not rise to the level of
15 ‘psychiatric impairment’ that would implicate § 157(b)(5)). Where emotional distress is merely a
16 component of damages and not the basis for a “separate personal injury tort, e.g., intentional or negligent
17 infliction of emotional distress,” it is improper to contend that such emotional distress is a component
18 of “the sort of damages contemplated by 28 U.S.C. § 157(b)(5).” In re Littles, 75 B.R. 240, 242 (Bankr.
19 E.D. Pa. 1987) (violations of the Fair Debt Collection Practices Act may by their very nature be expected
20 to cause emotional distress, therefore “consequential damages for emotional distress or physical distress
21 does not trigger the application of 11 U.S.C. § 157(b)(5)”).

22 In order to determine whether emotional trauma is the gravamen of this complaint, the Court has
23 thoroughly reviewed the plaintiff’s allegations. Plaintiff alleged that the defendant filed and maintained
24 the dental malpractice lawsuits in order to “cause plaintiff severe emotional distress and financial loss.”
25 Complaint at ¶ 7 and 9. Plaintiff further alleged that the defendant orchestrated a scheme with the
26 malpractice plaintiffs “for the purpose of inflicting devastating emotional distress over an extended period
27 of time, depending on the traumatic effect of the cumulative impact of The Lawsuits to extort settlement
28 from plaintiff and/or plaintiff’s insurance carrier.” Complaint at ¶ 10. Plaintiff finally alleged that as a

1 result of the defendant's actions, plaintiff was damaged in a sum to be determined at trial.

2 Although the plaintiff has alleged that defendant's actions were taken for the purpose of causing
3 emotional distress, there are absolutely no allegations that any such distress resulted from those actions.
4 Instead, the focus of the complaint is on defendant's actions and his intent, not on any resulting damages.
5 As the Court noted above, claims of emotional distress which are not the focus of a complaint will not
6 be transferred to the district court. Bertholet, 126 B.R. at 415. Consequential damages for emotional
7 distress may have resulted from defendant's actions, but as the Littles court held, consequential damages
8 for emotional distress do not trigger § 157(b)(5). 75 B.R. at 242.

9 Furthermore, the Von Volkmar decision that White cites may be distinguished on its facts. In re
10 Von Volkmar, 217 B.R. 561 (Bankr. N.D. Ill. 1998). In that case, the debtor's former husband filed a
11 complaint to except a debt from discharge and for liquidation and awards of damages for the underlying
12 state court claims. The Von Volkmar court held that it did not have jurisdiction to liquidate that portion
13 of the complaint that sought adjudication of the state court causes of action, including a malicious
14 prosecution claim. In reaching its decision, the court explained that the malicious prosecution claims
15 against defendant were based on allegations of physical injury¹ which qualified as personal injuries under
16 Illinois law. The court was precluded from hearing those claims by the limits of § 157(b)(5).

17 In the instant case, White has not alleged any physical injuries. In fact, he has not even alleged
18 any emotional injuries, only that Warner's actions were taken with the intent to cause emotional distress.
19 Unlike the "plethora of physical injuries" alleged by the Von Volkmar plaintiff, 217 B.R. at 566, White's
20 complaint is devoid of any such allegations. For these reasons, the Court finds that § 157(b)(5) does not
21 apply and plaintiff's request to transfer the case to district court is denied.

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24 The Von Volkmar plaintiff alleged that the defendant's actions caused the plaintiff to
25 suffer great anxiety and pain of body and mind, and [he] continues to suffer the
26 same today, in that Plaintiff did and continues to suffer from (a) the stress and
27 anxiety of being subjected to arrest, trial, and possible imprisonment, (b)
28 aggravation of a gastric disorder, (c) loss of weight, (d) loss of sleep, (e) loss of
appetite, (f) hair loss, (g) nervousness, (h) an inordinate number of head aches
[sic], and (i) an inordinate number of upset stomach [sic] and stomach aches.

217 B.R. at 566.

1 The remaining question is whether White is entitled to a jury trial. To determine whether a party
2 is entitled to a jury trial in bankruptcy, this Court must first determine whether that party would be
3 entitled to a jury trial under the Seventh Amendment. Granfinanciera, S.A. v. Nordberg, 492 U.S. 33,
4 41-42 (1989). When deciding whether the Seventh Amendment right to a jury trial applies, the Court
5 must apply a three-step test to make the following determinations: first, whether there would have been
6 a right to a jury trial in 18th century England; second, whether the matter is legal or equitable in nature;
7 and third, whether the matter involves private rights, as opposed to public rights.

8 Actions to determine the nondischargeability of debts fail the second prong of this test because
9 such proceedings are equitable in nature. “A bankruptcy discharge and questions concerning the
10 dischargeability of certain debts, involve issues with an equitable history and for which there was no
11 entitlement to a jury trial in the courts of England prior to the merger of law and equity.” In re Hallahan,
12 936 F.2d 1496, 1505 (7th Cir. 1991) (citations omitted). Further, in the case of malicious prosecution,
13 there was no historical right to a trial by jury. See Andrus v. Estrada, 39 Cal. App. 4th 1030, 1041 (Ct.
14 App. 1995) (“[m]alicious prosecution of a civil suit was not cognizable at English common law in 1850”).

15 Finally, the bankruptcy court has jurisdiction to decide dischargeability and the issues of liability
16 and damages. In re Kennedy, 108 F.3d 1015, 1017-1018 (9th Cir. 1997). The Seventh Circuit has noted
17 that “allowing the bankruptcy judge to settle both the dischargeability of the debt and the amount of the
18 money judgment accords with the rule generally followed by courts of equity that having jurisdiction of
19 the parties to controversies brought before them, they will decide all matters in dispute and decree
20 complete relief.” In re Hallahan, 936 F.2d 1496, 1508 (7th Cir. 1991).

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For the reasons stated above, the motion to transfer is denied and the demand for jury trial is denied. This proceeding is set for trial during the week of August 2, 1999.

Good cause appearing, IT IS SO ORDERED:

DATE: _____

Marilyn Morgan
United States Bankruptcy Judge